



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Human Resource Management

Policy Number: 6-17

Subject: Fair Labor Standards Act Compliance

Supersedes: 07/01/05

Date Issued: 01/06/06

I. INTRODUCTION

This administrative procedure establishes policies and procedures to ensure compliance with the Fair Labor Standards Act (FLSA). Further, this procedure defines county policy regarding employees exempt from or not covered by the FLSA.

II. DEFINITIONS

- A. **Exempt Employee (E)** – An employee who is exempt from guidelines and regulations established by the FLSA. To be considered exempt, an employee must meet one of the tests specified in Section III.
- B. **Nonexempt Employee (N)** – An employee who is subject to guidelines and regulations established by the FLSA.
- C. **Non-covered Employee (NC)** – An employee not covered by the FLSA because of falling within one of the following groups:
 - 1. Elected officials and their personal staffs
 - 2. Policy making appointees
 - 3. Legal advisors
 - 4. Legislative employees
 - 5. Volunteers
 - 6. Independent contractors
 - 7. Prisoners
 - 8. Certain trainees
- D. **Work Period** – The standard county workweek begins on Saturday at 12:01 a.m. and ends Friday at 12:00 a.m. Refer to Accounting Department Administrative Procedure 1-4 for more details.

III. EXEMPTIONS

To be considered exempt from provisions of the FLSA, one of the following tests must be met:

- A. **Executive** – An executive employee must meet all of the following requirements to be exempt from the FLSA:
 - 1. The employee's primary duty is managing the county, or a customarily recognized department, or subdivision;
 - 2. The employee must customarily and regularly direct the work of at least two other full-time employees or their equivalent;
 - 3. The employee must have the authority to hire or fire other employees, or have his or her suggestions and recommendations regarding the hiring, firing, advancement, promotion or any other change of status of other employees be given particular weight; and
 - 4. The employee must be compensated on a salary basis at a rate of not less than \$455 per week.

- B. **Administrative** – An administrative employee must meet all of the following requirements to be exempt from the FLSA:
1. The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the county or its customers;
 2. The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of importance; and
 3. The employee must be compensated on a salary or fee basis at a rate of not less than \$455 per week.
- C. **Professional** – A professional employee must meet all of the following requirements to be exempt from the FLSA:
1. The employee must be compensated on a salary or fee basis at a rate of not less than \$455 per week, and
 2. The employee's primary duty must be either:
 - a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction, or
 - b. Work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- D. **Computer Employees** – A computer employee must meet all of the following requirements to be exempt from the FLSA:
1. The employee must be compensated on a salary or fee basis at a rate of not less than \$455 per week, and
 2. The employee's primary duty consists of:
 - a. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - b. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - c. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - d. A combination of the aforementioned duties, the performance of which requires the same level of skills.

IV. COMPENSATORY TIME

- A. **Nonexempt Employees** – Compensatory time is earned for the number of hours worked in excess of the employee's standard 7-day/40-hour workweek. Compensatory time is earned at the rate of one and one half-hour for each hour worked in excess of 40 hours. Accrued compensatory time must not exceed 50 hours. Refer to Accounting Department Administrative Procedure 1-18 for more details. For examples on how to calculate compensatory time for nonexempt employees, refer to Accounting Department Administrative Procedure 1-18 V.
- B. **Exempt Employees** – At the discretion of the department director/office administrator, compensatory time may be granted on an hour for hour basis and only in one-hour increments. Portions of hours may not be accumulated. Accumulated compensatory time may not exceed 15 workdays (120 hours) and will not be paid at termination of employment. Exempt employees are ineligible for overtime pay. For examples on how to calculate compensatory time for exempt employees, refer to Administrative Procedure 1-18 VI.

V. HOURS WORKED

All time during which a nonexempt employee is required or permitted to work is considered as time worked.

- A. **Breaks** – County authorized rest periods of 15 minutes or less are counted as time worked.
- B. **Meals** – A bona fide meal period is a span of at least 30 consecutive minutes during which a nonexempt employee is completely relieved of duty and free to use the time for his/her own purposes. It is not counted as hours worked. Any “meal period” of less than 30 consecutive minutes shall be included as time worked.
- C. **On Call Time** – Payment for on call time depends on the employee’s freedom while on call. A nonexempt employee who is not required to remain on county premises and is free to engage in his or her own pursuits, subject only to the understanding that the employee leave word at his or her home or with the county is not accruing time toward hours worked while “on call.” Similarly, time spent carrying a pager is not considered to be time worked.
- D. **Training** – Training is not considered compensable working time if all of the following criteria are met:
 - 1. Attendance is outside the employee’s regular work hours;
 - 2. Attendance is voluntary;
 - 3. The employee does no productive work while attending the training; and
 - 4. The training is not directly related to the employee’s job.
- E. **Travel**
 - 1. **Home to Work** – Normal commuting to and from work is not included in compensable hours. This is true if the employee works at a fixed location or at different locations.
 - 2. **Home to Work on Assignment Outside of the County** – When an employee who regularly works inside the county is given an assignment outside the county, travel time must be included as compensable time. The usual time required to and from work will be deducted when determining the amount of compensable time.
 - 3. **Overnight Travel** – Travel by an employee who leaves the Richmond metropolitan area on county business overnight is counted as hours worked if such time is during the normally scheduled work hours. Travel time outside of normal work hours is not considered as hours worked. Overnight travel is counted as hours worked on non-scheduled workdays during regularly scheduled work hours. Regular meal time is not counted.

Example – An employee who has a work schedule of Monday - Friday, 8:30 a.m. - 5:00 p.m. leaves for Baltimore, Maryland, on Sunday afternoon at 3:00 p.m. and arrives in Baltimore at 6:30 p.m. The hours between 3:00 p.m. and 5:00 p.m. are counted as hours worked. The time between 5:00 p.m. and 6:30 p.m. is not counted as work time.
- F. **Waiting Time** – To determine if waiting time is compensable require close evaluation of all facts. HRM should be consulted if questions arise.
- G. **Voluntary overtime** - Nonexempt employees may not “volunteer” for extra work, i.e., report to work prior to the beginning of the work day, work through their lunch period, or remain after the official close of business of the work day. Department directors/office administrators shall be charged with the responsibility of enforcing this policy. Mere declaration of policy prohibiting an employee from “volunteering” time does not relieve the county of the liability to pay overtime for the extra work.
- H. **Multiple positions** - Nonexempt employees are prohibited from holding two county positions, either full or part-time, unless approved by HRM and the department directors/office administrators of both departments. Nonexempt employees may be utilized for special events,

such as the County Fair or working at a polling place on Election Day, if written approval is received in advance from the Department of Human Resource Management. Exempt employees may hold two county positions, at the discretion of the department directors/office administrators, provided work performance does not suffer. Employees who work in a seasonal recreational program that does not operate for more than seven months during a calendar year are exempt from overtime provisions and may hold two such positions within their department.

- I. Sick leave, part time leave, compensatory time and leave granted for recognition purposes will not be considered as hours worked for the purpose of computing overtime pay or the accrual of compensatory time. Holidays, annual leave, floating holidays, bereavement leave, military leave and civil leave are considered hours worked for the purpose of computing overtime pay.
- J. Notwithstanding the provisions of paragraph I., paid leave will be considered as hours worked for the purposes of computing regularly scheduled overtime pay for public safety employees when required by state law.
- K. Departments should monitor the amount of overtime to ensure the safety of the employee and others. Employees shall not work more than 700 hours of overtime in a calendar year. Fire and EMS personnel that work a 56-hour week shall not work more than 1,050 hours of overtime in a calendar year. The number of overtime hours will include all hours worked above an employee's regularly scheduled work hours, whether their compensation rate is at one and one half times their regular rate of pay or whether they are paid a flat rate.
- L. Employees may be required to work overtime to meet customer and operational needs. Adequate notice of required overtime shall be given when possible.

VI. OVERTIME PAYMENT CALCULATION - Refer to Accounting Department Administrative Procedure 1-18 for details.

VII. EMPLOYEE QUESTIONS

It is Chesterfield County's policy to comply with applicable wage and hour laws and regulations. Employees with questions or concerns about their salaried status or deductions in pay should immediately raise the issue with their department management or submit the issue in writing to the Compensation unit in Human Resource Management. If an investigation reveals an improper payment or deduction from pay, the county will make the appropriate adjustment and will take whatever action is necessary to ensure compliance with the salary basis test and other provisions of the Fair Labor Standards Act.